

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CLIFFORD GRIFFITHS,

Plaintiff-Appellee,

v

YUCEL SEZGIN, M.D., and YUCEL SEZGIN,  
M.D., P.C.,

Defendants-Appellants.

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UNPUBLISHED

August 23, 2005

No. 253913

Jackson Circuit Court

LC No. 01-003125-NH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this medical malpractice action, defendants Yucel Sezgin, M.D., and Yucel Sezgin, M.D., P.C., appeal by right from a judgment awarding plaintiff Clifford Griffiths \$300,000, plus interest, taxable costs, and mediation sanctions. Sezgin argues that the trial court committed error warranting reversal when it entered a default against him for failing to personally appear for trial. We reverse and remand for a new trial. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

This case arose when Sezgin operated on Griffiths' back, which had been diagnosed with degenerative disc disease and scoliosis. Sezgin performed a laminectomy and put a titanium cage around Griffiths' spinal column. After the operation, Griffiths began experiencing increasing back pain, difficulty walking, and pain in his groin. Griffiths returned to Sezgin on two subsequent occasions because of the pain, and each time Sezgin gave him an epidural injection in his groin. Sezgin told Griffiths that one leg was shorter than the other and that he should have special shoes made to correct the problem. Shortly thereafter, Sezgin told Griffiths that there was nothing more he could do to help him.

Eventually, Griffiths was referred to a neurosurgeon, who told Griffiths that the first surgery had been performed improperly. The neurosurgeon explained that the cage was not in proper position and that his spine was unstable and unsupported, which had caused his rib cage to collapse and impinge on his nerves, causing severe pain. The neurosurgeon performed surgery on Griffiths to correct these problems.

Griffiths filed a complaint against Sezgin individually as well as Yucel Sezgin, M.D., P.C.,<sup>1</sup> alleging that, as a result of Sezgin's negligence, Griffiths sustained pain, suffering, and disability, and would require additional surgeries to correct the problem. On the date set for trial, Sezgin did not appear, although his attorney was present and prepared to defend. In light of Sezgin's failure to appear, the trial court found Sezgin in default and entered a default with respect to the issue of Sezgin's breach of the standard of care. The trial court indicated that it was entering the default because Sezgin did not appear even though he knew about the trial date, and Griffiths had the right to cross-examine him. The jury found that Sezgin's medical malpractice was the proximate cause of Griffiths' injuries and that Griffiths had suffered \$300,000 in damages. The trial court entered a judgment against Sezgin of \$300,000 plus interest, taxable costs, and mediation sanctions.

## II. Default

### A. Standard Of Review

We review the trial court's decision to enter a default for an abuse of discretion.<sup>2</sup>

### B. Absence Of Subpoena Or Court Order To Appear

Although Sezgin failed to personally appear for trial, his attorney did appear on his behalf and was prepared to defend against Griffiths' malpractice claim. Rather than allowing Sezgin's attorney to proceed, the trial court defaulted Sezgin on the issue of his breach of the standard of care. We conclude that the trial court abused its discretion in doing so.

In *Rocky Produce, Inc v Frontera*,<sup>3</sup> this Court reversed and remanded for trial where, as in this case, the trial court entered a default judgment against the defendant because she failed to appear for trial, even though the defendant's attorney was present on her behalf. The Court explained:

The right to representation by legal counsel in a civil case is provided in our Michigan Constitution, Const 1963, art 1, § 13. This right is further augmented by MCR 2.117(B)(1), which provides in part:

An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

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<sup>1</sup> A third defendant, Doctors Hospital, was dismissed by stipulation before trial.

<sup>2</sup> See *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003).

<sup>3</sup> *Rocky Produce, Inc v Frontera*, 181 Mich App 516; 449 NW2d 916 (1989).

A party may be required to appear at trial if a properly issued subpoena or order from the court commands the appearance and failure to comply can result in a default judgment. MCR 2.506. However, absent a subpoena or order from the court to appear, a defendant in a civil case is not required to appear in person for a scheduled trial.

The record in this case does not reflect either the issuance of a subpoena or an order to appear. The unsigned, undated trial notice which was sent to defendant's attorney did not constitute an order to appear.<sup>[4]</sup>

Our review of the record fails to disclose the existence of a subpoena or court order compelling Sezgin's personal appearance at trial. The scheduling order Griffiths refers to contains no language compelling Sezgin's personal attendance. Further, if Griffiths believed he needed to cross-examine Sezgin, Griffiths should have subpoenaed him. Under the circumstances, Sezgin was not required to personally appear at trial, and the trial court abused its discretion in ruling otherwise.<sup>5</sup> The judgment is vacated.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald

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<sup>4</sup> *Id.* at 517-518, citing MCR 2.602(A).

<sup>5</sup> See *id.* at 516-518.